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Human rights questions: implementation of human rights instruments

Status of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

Report of the Secretary-General**

1. The General Assembly, by its resolution 45/158 of 18 December 1990, adopted and opened for signature, ratification and accession the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and called upon Member States to consider signing and ratifying or acceding to the Convention as a matter of priority.

2. In its resolution 56/145 of 19 December 2001, the Assembly called upon all Member States to consider signing and ratifying or acceding to the Convention as a matter of priority; requested the Secretary-General to provide all the facilities and assistance necessary for the promotion of the Convention through the World Public Information Campaign on Human Rights and the programme of advisory services in the field of human rights; welcomed the global campaign for the entry into force of the Convention, and invited the organizations and agencies of the United Nations system and intergovernmental and non-governmental organizations to intensify further their efforts with a view to disseminating information on and promoting understanding of the importance of the Convention; and requested the Secretary-General to submit an updated report on the status of the Convention to the Assembly at its fifty-seventh session.

3. As at 20 June 2002, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families had been ratified or acceded to by 19 States, namely, Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Cape Verde, Colombia, Ecuador, Egypt, Ghana, Guinea, Mexico, Morocco, the Philippines, Senegal, Seychelles, Sri Lanka, Tajikistan, Uganda and Uruguay. In addition, 11 States, namely, Bangladesh, Burkina Faso, Chile, Comoros, Guatemala, Guinea-Bissau, Paraguay, Sao Tome and Principe, Sierra Leone, Togo and Turkey, signed the Convention. The Convention will enter into force when at least 20 States have ratified or acceded to it. Therefore, only one more ratification or accession is needed for the Convention to enter into force.

4. Promotion of the international human rights treaties, including the Convention, is an ongoing priority of the Secretary-General and the United Nations High Commissioner for Human Rights. In his report to the Millennium Assembly of the United Nations (A/54/2000), the Secretary-General stated that the expansion of the rule of law had been the foundation of much of the social progress achieved in the past millennium but remained an unfinished project, especially at the international level, and that

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** This report was submitted on 9 August 2002 so as to include as much up-to-date information as possible.

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support for the rule of law would be enhanced if countries signed and ratified international treaties and conventions. A treaty signature/ratification event was held in parallel with the Millennium Assembly, where 273 treaty actions were taken by 84 States. Encouraged by the public reaffirmation by States of their commitment to the international rule of law, another treaty event which focused on the rights of women and children was organized in 2001. The event attracted the participation of 61 States, which took 135 treaty actions on treaties related to the rights of women and children. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was among the 23 core treaties to which States were invited to pay special attention. In 2002, another treaty event focusing on sustainable development was held in conjunction with the World Summit on Sustainable Development at Johannesburg from 26 August to 4 September 2002. The Convention was one of the 25 core treaties to which States were invited to pay special attention.

5. The importance of ratifying the Convention has also been stressed at the regional level. The General Assembly of the Organization of American States, in its resolution AG/RES.1775 (XXXI-0/01) of 5 June 2001, entitled "The human rights of all migrant workers and their families", resolved to urge the member States of the organization to consider signing, ratifying or acceding to the American Convention on Human Rights and the other instruments of the system, as well as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

6. On 18 December 2001, International Migrants Day, the Secretary-General called on all Member States which had not yet done so, to ratify or accede to the Convention, and urged Governments and civil society alike to act on the recommendations of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. The World Conference had urged those States that had not yet done so to consider signing and ratifying or acceding to certain instruments, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

7. Under the joint programme of the Office of the United Nations High Commissioner for Human Rights and the United Nations Development Programme on the strengthening of human rights, one subregional workshop was held in the Marshall Islands, from 6 to 9 March 2001, and another in Fiji, in December 2001, for a group of Pacific island States. These workshops were aimed at raising understanding of the main treaty provisions, examining the implications of ratification and informing Governments of the kinds of assistance that are available from the United Nations if they should wish to pursue ratification. The Convention on the rights of migrants is one of the seven treaties covered by the workshops.

8. Furthermore, the International Steering Committee of the Global Campaign for Ratification of the Convention on the Rights of Migrants, which was established in March 1998 for the purpose of building and popularizing a global campaign to promote the ratification and entry into force of the Convention, continued its activities. The Office of the High Commissioner continued participating in and supporting the initiative. During the fifty-eighth session of the Commission on Human Rights, held from 28 March to 26 April 2002, the Steering Committee, together with the Office, organized a panel discussion aimed at promoting ratification of the Convention. Speakers included the High Commissioner and representatives of the International Labour Organization and the International Organization for Migration, the Special Rapporteur on the human rights of migrants and representatives of several non-governmental organizations. In her introductory statement, the High Commissioner reiterated that the panel had been convened to draw attention to the need for ratification of the Convention. In particular, she pointed out that, as migration flows increased around the world, the need for a new human rights protection regime for migrants became ever more urgent, and that the Convention would open a new chapter in the history of efforts to establish the rights of migrant workers in international law and ensure that those rights were protected and respected.

9. The Special Rapporteur on the human rights of migrants continued to promote adherence to the Convention within the framework of the mandate entrusted to her by the Commission on Human Rights. She has continued to highlight the importance of ratification of the Convention for the full and effective protection of the human rights of migrants.

10. Finally, through the programme of advisory services in the field of human rights, efforts have been pursued by the Secretariat to establish a dialogue with States that have not adhered to international human rights treaties, including the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Human rights of migrants

Note by the Secretary-General**

The Secretary-General has the honour to transmit to members of the General Assembly, a report on the human rights of migrants prepared by Gabriela Rodríguez Pizarro, Special Rapporteur of the Commission on Human Rights, pursuant to Commission resolution 2002/62 which was adopted by the Economic and Social Council in decision 2002/266.

* A/57/150.
** This report was submitted after 2 July 2002 because it was necessary to add updated information.

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Summary

In the present report the Special Rapporteur submits a summary of her activities during the first three years following the establishment of her mandate and her vision of the situation with regard to the protection of the human rights of migrants.

In the second section she describes the international context in which her mandate was created and the numerous activities that have occurred at the international level and that demonstrate the growing interest taken by the international community, States and non-governmental organizations in the issue of the protection of the human rights of migrants.

The Special Rapporteur also describes the principal working methods associated with her mandate and the legal framework that has been developed in order to give effect to it. She gives an account of the activities she has carried out in her capacity as Special Rapporteur in order to underscore the intensity and wealth of exchanges that have taken place around the mechanism.

She also presents her vision of key issues that have been developed in her mandate. They are: discrimination; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the situation of migrant women and violence against migrant women; unaccompanied minors; irregular migration; trafficking, smuggling and slave labour; orderly and decent migration management and the role of the non-governmental organizations in protecting the human rights of migrants.

In carrying out her mandate, the Special Rapporteur has also paid particular attention to the situation of the families left behind in their communities of origin; the vulnerability of female migrant domestic workers; the need to deal with the problem of those fleeing from situations of persecution and widespread war who are not recognized as refugees and who therefore become irregular migrants; and the serious problem of corruption and the prevention of smuggling and trafficking. The Special Rapporteur also deals with the issue of family reunification and the right of every individual to "leave any country, including his own, and to return to his country" (article 13, paragraph 2, of the Universal Declaration of Human Rights.

The Special Rapporteur has noted, inter alia:

(a) Her concern at situations of detention and expulsion of unaccompanied minors and the obstacles to family reunification that affect such minors;

(b) That a good many countries have not come up with an effective strategy to combat the spread of illegal migrant smuggling or made trafficking a punishable offence under their law;

(c) Her concern at reports received and direct observation in testimony from migrants, the authorities and non-governmental organizations that the criminal activities of trafficking and smuggling are taking place in a climate of extreme corruption;

(d) The need to integrate the issue of protection of the human rights of migrants into all stages of migration management.

The Special Rapporteur's recommendations include the following:

(a) The Special Rapporteur strongly recommends ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the United Nations Convention against Transnational Organized Crime and the protocols thereto concerning smuggling and trafficking and the adoption of national legislation to prevent, counter and punish trafficking and smuggling;

(b) In the countries of destination of the trafficking and smuggling networks, it is recommended that specific measures be taken to protect and decriminalize the victims, and effective strategies should be adopted to eliminate the use of exploitative labour;

(c) The Special Rapporteur recommends that the debate on migration should not be polarized, since the protection of the human rights of migrants is not incompatible with either the exercise of sovereignty by States or the effective implementation of national security policies;

(d) The Special Rapporteur urges States to seek joint, equitable and appropriate solutions, through regional and bilateral dialogue, to the problems posed by migration; existing regional dialogues should move beyond the initial phase of diagnosing the problem to that of concerted action by participating countries;

(e) It is recommended that the measures decided on at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance should be translated into specific national programmes of action, and take into account all the vulnerable groups identified at the Conference, including migrants;

(f) The Special Rapporteur recommends that all States should draw up specific programmes dealing with women migrant domestic workers;

(g) The Special Rapporteur recommends that consular protection be put into effect;

(h) The Special Rapporteur strongly recommends that States should review their practice and legislation so as to ensure that unaccompanied minors are not subjected to restrictions on their liberty and are able to receive assistance appropriate to their status as minors. She also recommends that decisions taken by States in cases involving minors should have as their main objective the protection of the child's best interest;

(i) The Special Rapporteur recommends that non-governmental organizations should accompany and care for migrants who are detained.

Report on the Human Rights of Migrants submitted by the Special Rapporteur of the Commission on Human Rights

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I. Introduction

1. Pursuant to Commission on Human Rights resolution 2002/62, entitled "Human rights of migrants", the Special Rapporteur on the human rights of migrants, Ms. Graciela Rodríguez Pizarro, submits the present report to the General Assembly. In the resolution the Commission on Human Rights requested the Special Rapporteur to submit a report on her activities to the General Assembly at its fifty-sixth session and decided to extend the Special Rapporteur's mandate for a further three-year period.

2. In the present report the Special Rapporteur reports to the General Assembly on what she has been done to protect the human rights of migrants since the establishment of her mandate in 1999. Conscious of the great responsibility and the huge task that this entails, she takes this opportunity to state her overall vision of the phenomenon of migration, as she has been doing in her annual reports to the Commission on Human Rights.

II. Mandate

A. International context

3. The International Organization for Migration (IOM) has estimated that by 2050 there will be a total of 230 million migrants in the world. According to IOM, intra- and extraregional migratory flows are becoming increasingly diverse, with a growing proportion being made up of women. IOM also claims that migration through irregular channels is increasing and that the problem of trafficking in persons is becoming more acute. On the other hand, globalization holds out the promise of richer social and cultural exchanges through migration, which is becoming an undeniable reality in our societies. In her speech at the fifty-eighth session of the Commission on Human Rights, the Special Rapporteur said that we cannot restrict our consideration (of the migration phenomenon) to the purely economic point of view, in which we see the productivity and (labour and economic) contribution of migrants as the only values. We must adopt an integral approach from the perspective of respect for migrants' rights, of the responsibility borne by States as guarantors of those rights and the positive contribution made by migrants at the social and cultural level. She pointed out that, over the past decade, there had been far more debate on the migration phenomenon at the multilateral and regional level.

4. The international community's growing interest in the protection of the human rights of migrants was evidenced by the numerous recent world conferences and multilateral forums at which States had devoted extensive attention to the aspects of migration that give rise to particular concern. Among these forums, the Special Rapporteur drew particular attention to the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in 1993 (part II, paras. 33-35), the Programme of Action of the International Conference on Population and Development (chapter X), the Programme of Action of the World Summit for Social Development (chapter III), the Beijing Declaration and Platform for Action adopted by the Fourth World Conference on Women (chapter IV.D) and the Declaration and Plan of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in 2001. The Special Rapporteur also mentioned the International Conference on Financing for Development, held in Monterrey, Mexico, from 18 to 22 March 2002.

5. The international community's concern about the human rights of migrants led to the establishment, in 1997, of the Working Group of intergovernmental experts on the human rights of migrants and, in 1999, to the decision to appoint a special rapporteur on the human rights of migrants. In 2002, the Commission on Human Rights adopted no fewer than four resolutions relating to the protection of the human rights of migrants,[1] which showed the growing interest in the topic. On 19 December 2001, the General Assembly also adopted resolution 56/170 on the protection of migrants, paragraph 5 of which reiterates "the need for all States parties to protect fully the universally recognized human rights of migrants, especially women and children, regardless of their legal status, and to treat them humanely, in particular with regard to assistance and protection".

6. The Special Rapporteur draws attention to the renewed commitment, contained in the United Nations Millennium Declaration, to take measures to ensure respect for and protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia

in all societies and to promote greater harmony and tolerance.

7. The past few years have seen an unprecedented increase in the smuggling of and trafficking in persons, for which, unfortunately, migrants provide a most important source. The Protocols to the United Nations Convention against Transnational Organized Crime, on Trafficking in Persons and Smuggling of Migrants, which contain clauses to protect the victims of such activities, were adopted in 2000.

8. Another area of progress noted by the Special Rapporteur since she assumed her position is the growing support for the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, which at the time of submission of this report, required only one more ratification for its entry into force.

9. This growing interest on the part of States has been accompanied by greater activity on the part of non-governmental organizations (NGOs) and civil society for the protection of migrants at the international level. The Special Rapporteur considers that the role of NGOs and their specific proposals concerning migration at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as their presence at various regional forums, and other international forums, point up the importance of consensus among those concerned.

B. History and content of the mandate

10. In its report of 9 March 1999 (E/CN.4/1999/80), the Commission on Human Rights Working Group of intergovernmental experts on the human rights of migrants, which was set up in 1997, concluded that an international monitoring mechanism should be set up especially to deal with the protection of migrants. The Commission on Human Rights adopted resolution 1999/44, setting up such a mechanism, and Ms. Gabriela Rodríguez Pizarro was subsequently appointed Special Rapporteur. According to the resolution, the main function of the Special Rapporteur would be to "examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation". Specifically, the Special Rapporteur's functions are as follows:

(a) To request and receive information from all relevant sources, including migrants themselves, on violations of the human rights of migrants and their families;

(b) To formulate appropriate recommendations to prevent and remedy violations of the human rights of migrants, wherever they may occur;

(c) To promote the effective application of relevant international norms and standards on the issue;

(d) To recommend actions and measures applicable at the national, regional and international levels to eliminate violations of the human rights of migrants;

(e) To take into account a gender perspective when requesting and analysing information, as well as to give special attention to the occurrence of multiple discrimination and violence against migrant women.

11. The Commission also requested that, in carrying out her mandate, the Special Rapporteur should:

(a) Give careful consideration to the various recommendations of the Working Group of intergovernmental experts aimed at the promotion and protection of the human rights of migrants and to take into consideration relevant human rights instruments of the United Nations to promote and protect the human rights of migrants;

(b) Take into account bilateral and regional negotiations which aim at addressing, inter alia, the return and reinsertion of migrants who are non-documented or in an irregular situation.

C. Legal framework of the mandate

12. The legal frame of reference for the Special Rapporteur's mandate was set out in the report she submitted to the Commission on Human Rights in 2001 (E/CN.4/2001/83 and Add.1), which listed the main international instruments applying to the human rights of migrants, with particular reference to rights specifically relating to migrants. Another important document relating to the rights of non-nationals is the 2001 report of the Special Rapporteur of the Subcommission on the Promotion and Protection of

Human Rights, David Weissbrodt (E/CN.4/Sub.2/2001/20 and Add.1).

13. The primary reference document for the mandate on the human rights of migrants is the Universal Declaration of Human Rights, followed by the principal international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

14. All these conventions and the Universal Declaration contain clauses concerning non-discrimination in the application of the rights they set forth. Article 2 of the Universal Declaration provides that everyone is entitled to the rights and freedoms set forth in the Declaration "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The purpose of the provisions of the Declaration and the international instruments is to protect, without distinction, every person without exception within the jurisdiction of a State. The opinions and decisions of the human rights treaty monitoring bodies throw light on the extent to which the rights in these treaties are applied to aliens in the territory of each State party (for an exhaustive study, see document E/CN.4/Sub.2/2001/20 and Add.1).

15. The Special Rapporteur has taken particular note of General Comment 15 of the Human Rights Committee, which states, inter alia, that aliens have an inherent right to life and must not be subjected to torture, to cruel, inhuman or degrading treatment or to slavery. They have the right to freedom of thought, conscience and religion and shall not be subjected to retrospective penal legislation. They are entitled to recognition before the law. The Committee on Economic, Social and Cultural Rights has adopted opinions along the same lines. She noted, for example, that article 2 of the Convention on the Rights of the Child and article 3 of the Convention against Discrimination in Education both state that the principle of non-discrimination extends to all persons of school age residing in the territory of a State party, including non-nationals, and irrespective of their legal status (see E/C.12/1999/10, para. 34).

16. The Special Rapporteur has also drawn on the opinions of working groups and other special rapporteurs in determining cases of violations of the specific rights with which they are concerned. For example, she has drawn on the opinion of the Working Group on Arbitrary Detention concerning the detention of unaccompanied minors (see E/CN.4/1999/63/Add.3). She has also taken joint action with the Special Rapporteur on extrajudicial, summary or arbitrary executions on cases involving the death penalty in which the provisions of the Vienna Convention on Consular Relations of 1963 have not been observed.

D. Methods of work

17. Since her appointment, the Special Rapporteur has established various types of communication with Governments, governmental and non-governmental organizations and migrants themselves. She has undertaken four missions in her capacity as Special Rapporteur and has participated in numerous international events, which are described in the chapter on her activities.

Type of communications received by the Special Rapporteur

18. The Special Rapporteur receives a large number of communications containing information on alleged violations of the human rights of individuals or groups that are not nationals of the country in which they live. While the main sources of this type of communication are non-governmental organizations, information is also received directly from migrants, from intergovernmental organizations, from other United Nations human rights bodies and sometimes even from Governments. The Special Rapporteur has demonstrated her willingness to respond jointly with other subsidiary bodies of the Commission.

19. In order to facilitate the communication of allegations of violations of the human rights of migrants, the Special Rapporteur has prepared a questionnaire clearly setting out the information required to process a complaint under her mandate. This questionnaire is available on the Web site of the Office of the United Nations High Commissioner for Human Rights (http://www.unhchr.ch/html/menu2/7/b/mmig.htm).

20. Communications received from Governments contain information in response to urgent communications and other letters sent by the Special Rapporteur.

Type of communications sent by the Special Rapporteur

21. The Special Rapporteur maintains various types of communications with Governments under the resolutions that established her mandate and the type of cooperation that Governments are expected to provide to the office of the Special Rapporteur on the human rights of migrants. In particular, the Special Rapporteur has established three main types of communications distinguished by their informational content, their nature as a request for cooperation with her office, or communications in which the Special Rapporteur requests the urgent intervention of a Government to prevent or, failing that, to investigate violations of the human rights of migrants. In all of her missions, the Special Rapporteur has initiated dialogues at three levels, namely, with Governments, civil society, and non-governmental organizations and migrants themselves, as recommended in the resolutions that established her mandate. The information obtained from these sources has broadened the understanding of the Special Rapporteur and has provided a complete picture of the situation in a country.

Visits

22. Pursuant to the resolutions establishing her mandate (1999/44, 2000/48, 2001/52, 2002/62), the Special Rapporteur undertook four missions during the first three years of her mandate. She visited Canada in 2000 (see E/CN.4/2001/83/Add.1) and undertook a mission to Ecuador in 2001 (see E/CN.4/2002/94/Add.1). In 2002, she visited Mexico, the border between Mexico and the United States of America, and the Philippines. The reports on these recent missions will be submitted to the Commission on Human Rights at its fifty-ninth session.

23. The Special Rapporteur considers that visits to a country are a good way of monitoring the specific situation in a country in order to be able to provide the Commission with an overview of the situation. She is convinced that to visit a country is to open up a dialogue whose purpose is to identify the best practices and areas in which the protection of the human rights of migrants can be improved.

24. The table contains information concerning the activities of the Special Rapporteur during her mandate.

III. Activities of the Special Rapporteur

Date	*Activity*	*Place*
4-6 November 1999	General Assembly	New York, United States of America
1-5 May 2000	First Preparatory Meeting for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance	Geneva, Switzerland
5-9 June	VII Meeting of Special Rapporteurs	Geneva, Switzerland
4-6 September 2000	Forum on "Civil Society — developing new forms of hemispheric cooperation on migration issues"	San José, Costa Rica
18 September-1 October 2000	Official visit	Canada
4-6 October 2000	Regional Seminar of Experts on the Prevention of Ethnic and Racial Conflicts in Africa, held in preparation for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance	Addis Ababa, Ethiopia
25-27 October 2000	Regional Seminar of Experts on Economic, Social and Legal Measures to Combat Racism, with Particular Reference to Vulnerable Groups, held in preparation for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance	Santiago, Chile
6-11 November 2000	II International Colloquium on Human Rights of the University of Zaragoza. "Immigration and Rights"	Zaragoza, Spain
24-27 November 2000	Meeting of the Ibero-American Federation of Ombudsmen	Mexico City, Mexico
16-17 February 2001	Preparatory Meeting for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, organized by the National Distance Education University of Spain in cooperation with the Office of the United Nations High Commissioner for Human Rights	Segovia, Spain
19-21 February 2001	Asian Preparatory Meeting for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance	Tehran, Islamic Republic of Iran
22-24 January 2001	Preparatory meeting for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, Regional Conference for Africa	Dakar, Senegal
14-17 May 2001	Regional Forum of Asian Non-Governmental Organizations on Female Migrant Domestic Workers	Chiang Mai, Thailand

Date	Activity	Place
21 May-1 June 2001	Second Preparatory Meeting for the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance	Geneva, Switzerland
18-22 June 2001	VIII Meeting of Special Rapporteurs	Geneva, Switzerland
31 August- 7 September 2001	World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance	Durban, South Africa
16-17 October 2001	Conference of Ministers of the European Union on Migration	Brussels, Belgium
5-16 November 2001	Official visit	Ecuador
23-25 November 2001	International Consultative Conference on School Education in Relation to Freedom of Religion and Belief, Tolerance and Non-Discrimination	Madrid, Spain
27-29 November 2001	82nd Meeting of the Council of the International Organization for Migration (IOM) and commemoration of the fiftieth anniversary of the Organization	Geneva, Switzerland
6-7 December 2001	Participation in the meeting of the Office of the United Nations High Commissioner for Human Rights on a regional strategy for Latin America and the Caribbean	Geneva, Switzerland
10 December 2001	International Human Rights Day. "Panel of Experts on Asylum and Migration" organized by the Office of the United Nations High Commissioner for Human Rights and the Office of the United Nations High Commissioner for Refugees	Geneva, Switzerland
22 January 2002	BBC World Forum on migration and human rights	Mexico City, Mexico
30 January- 1 February 2002	International symposium on migration policies in Europe and the Mediterranean. Catalan Institute of the Mediterranean	Barcelona, Spain
25 February- 18 March 2002	Official visit	Mexico and the Mexican/United States border
10-13 and 15-17 April 2002	Commission on Human Rights	Geneva, Switzerland
14 April 2002	European Red Cross and Red Crescent Regional Conference on Migration and Health	Berlin, Germany
15 April 2002	Panel on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Commission on Human Rights	Geneva, Switzerland
20-29 June 2002	Official visit	Philippines

Date	Activity	Place
1-3 June 2002	Regional consultations with Asian non-governmental organizations organized by CARAM-Asia	Kuala Lumpur, Malaysia
24-28 June 2002	IX Meeting of Special Rapporteurs	Geneva, Switzerland

IV. Conceptual and substantive development of the question of the human rights of migrants

25. In her first report (E/CN.4/2000/82), the Special Rapporteur proposed that the following persons should be considered as migrants:

(a) Persons who are outside the territory of the State of which they are nationals or citizens, are not subject to its legal protection and are in the territory of another State;

(b) Persons who do not enjoy the general legal recognition of rights which is inherent in the granting by the host State of the status of refugee, naturalized person or of similar status;

(c) Persons who do not enjoy either general legal protection of their fundamental rights by virtue of diplomatic agreements, visas or other agreements.

26. In paragraph 30 of that report, the Special Rapporteur stressed that "in the light of the political, social, economic and environmental situation of many countries, it is increasingly difficult, if not impossible, to make a clear distinction between migrants who leave their countries because of political persecution, conflicts, economic problems, environmental degradation or a combination of these reasons and those who do so in search of conditions of survival or well-being that do not exist in their places of origin". The Special Rapporteur also noted the challenge of how to define migrant population in a way that takes account of new situations and how to reflect that concept in international instruments.

27. Since the establishment of her mandate, the Special Rapporteur has tried to draw attention to the situation of thousands of persons in various countries who do not benefit from protection under the Convention on the Status of Refugees and who nevertheless flee from situations of persecution and open warfare. It has been a matter of deep concern to the Special Rapporteur to observe the situation of thousands of persons in various countries of the world who are fearful of applying for refugee status or who are denied that status and go underground and become illegal migrants. The Special Rapporteur has reiterated the necessity for States Parties to the Convention of 1951 and the Protocol of 1967 to fulfil their obligations under these instruments. She has also reminded States that international human rights instruments constitute a legal framework for the protection of migrants and that, in this connection, the status of illegal migrant should not be used as justification for the violation of their rights.

A. Discrimination

28. Many countries have discriminatory laws and practices against foreigners seeking work in a country of which they are not nationals. The granting or denial of visas based on the particular national origin of the applicant and on the grounds of national security are some of the common realities facing migrant workers and which are a cause of concern to the Special Rapporteur. Also of concern to the Special Rapporteur are the proliferation of political platforms with anti-migrant language in many Western countries, acts of racial violence and xenophobia committed by extremist groups, and the use of negative and discriminatory stereotypes about migrants in the communication media. The Special Rapporteur is also concerned at the recent reports published by Human Rights Watch and Amnesty International on the situation of migrants in Spain and, in particular, all forms of discriminatory treatment towards them.[2]

29. The situation of the migrant in the face of discrimination, xenophobia and intolerance has been described at length by the Special Rapporteur in her reports (see A/CONF.189/PC.1/19 on the specific question of discrimination against women). The Special Rapporteur has noted how discrimination and marginalization are reasons for emigration from the country of origin. In addition, the existence of xenophobic and discriminatory attitudes in the migration process itself continues to give cause for concern. The Special Rapporteur considers that at the heart of the problem are the everyday customs in which the problem most clearly manifests itself. These customs have developed because of the existence of certain stereotypes, which must be rooted out by taking specific measures to vigorously promote human rights, democracy and cultural pluralism.

30. The measures agreed upon at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance must therefore be translated into concrete national service and preventive programmes that take into account all vulnerable groups that have been identified. During the

Conference, the 168 participating States endorsed a broad concept of protection of migrants and requested all States to "promote and protect fully and effectively the human rights and fundamental freedoms of all migrants, in conformity with the Universal Declaration of Human Rights and their obligations under international human rights instruments, regardless of the migrants' immigration status" (A/CONF.189/12, Programme of Action, para. 26). The Special Rapporteur is therefore concerned that certain countries have decided to give priority to the implementation of certain aspects of the Programme of Action of the Conference without taking into account all the points relating to migrants that were agreed on.

B. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

31. The Special Rapporteur has also focused, in part, on actively promoting ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. She has worked actively with the members of the Steering Committee of the Global Campaign for Ratification of the Convention and, at the fifty-eighth session of the Commission on Human Rights, she moderated a round-table meeting on the Convention in which representatives of international agencies, States, national institutions and civil society participated.

32. The Special Rapporteur is greatly encouraged that the Convention will shortly enter into force; only one more ratification is needed. She considers that the Convention is a fundamental element for the protection of the human rights of migrants since it contains a broad vision that includes the migrant's family and the situation of women and children, and explicitly recognizes the rights of undocumented migrants. Another positive element of the Convention is its broad vision of rights; although it is intended to regulate the rights of workers, it is not limited to the employment context but regulates the entire spectrum of workers' rights.

33. In view of the fact that the Convention is about to enter into force, the Special Rapporteur intends to collaborate closely with the treaty organ that is to be created pursuant to article 72 of the Convention to monitor its implementation by States Parties. At the same time, she strongly urges States that have not yet ratified the Convention to consider acceding to it.

C. The situation of women migrant workers and violence against women migrant workers

34. The Special Rapporteur considers it very important to tackle the issue of violence against women migrant workers as a vulnerable group and recalls that during the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance it was specifically recognized that discrimination takes many forms.

35. Due to their double marginalization as women and as migrants, women migrant workers may easily find themselves in situations in which they are vulnerable to violence and abuse, both at home and at work (see E/CN.4/1998/74/Add.1). As she pointed out in her first report (E/CN.4/2000/82, para. 56), women migrant workers dominate the informal labour market; they work as domestic, industrial or agricultural workers or in the service sector. The fact that gender roles are traditionally established and that men often do not share the domestic chores, particularly looking after children on a daily basis, makes it even more difficult for women to develop personally and professionally. It is important to point out that the Special Rapporteur notes with deep concern the situation of great vulnerability experienced by women and girls who are ill-treated, harassed and abused by family members to whose care they are entrusted, in the absence of the father and who hope to take advantage of the remittances the latter sends. Often it is the mother who is away and this, too, can lead to situations of vulnerability to sexual abuse, incest on the part of the father and economic exploitation.

36. The Special Rapporteur has also noted that "Both women who have been the victims of trafficking and those who migrate voluntarily may end up in situations of exploitation, violence and abuse. ... The exchange of sexual favours for permission to transit, which is common practice on some frontiers, is also a form of gender-based harassment to which migrant women are often subjected." (E/CN.4/2000/82, para. 56).

37. During the three years in which she has exercised her mandate, the Special Rapporteur has paid particular

attention to the situation of migrant women domestic workers. She has given visibility to the situation of that sector in all forums in which she has participated, and has pointed out that in order to protect the rights of such workers it is essential that domestic work be recognized. She has emphasized the problem of the underrecording of violations of the human rights of such women and the need to create accessible reporting and protection mechanisms for domestic workers. Violations of the human rights of domestic workers occur in "private" and this makes it very difficult to report them or to speak of them with anyone since the boss or employer has absolute power. This is often made worse when the employer keeps the domestic worker's documents as a means of coercion and pressure.

38. Fear, lack of documentation, the debt bondage to which they are subject in the country of origin in order to pay for the journey, lack of information in the country of origin, fear of being reported to the authorities by the employer and isolation, added to feelings of low self-esteem, cause women migrant workers to become very depressed and deny them access to basic worker's rights.

D. Unaccompanied minors

39. The Special Rapporteur has identified three situations that cause her particular concern where unaccompanied minors are concerned.

40. The first concerns cases of detention of unaccompanied minors. The Working Group on Arbitrary Detention determined during its visit to the United Kingdom that "unaccompanied minors should never be detained" (see E/CN.4/1999/63/Add.3, para. 37). The Special Rapporteur urges States to review their practice and legislation so as to ensure that unaccompanied minors are not subject to restrictions of their liberty and are able to receive assistance in keeping with their status as minors.

41 In her latest report to the Commission on Human Rights (E/CN.4/2002/94 and Add.1), the Special Rapporteur documented disturbing cases of minors being expelled at international borders, thus endangering their well-being and physical integrity. In that regard the Special Rapporteur draws attention to article 25 of the Universal Declaration of Human Rights which states that everyone has the right to a standard of living adequate for the health and well-being of himself and of his family. Article 24, paragraph 1, of the International Covenant on civil and Political Rights states that every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

42. The Special Rapporteur reminds States parties to the Convention on the Rights of the Child that under article 2, paragraph 1, of the Convention States parties shall respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. Article 3, paragraph 1, states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

43. Family reunification is the third area of concern, for the Special Rapporteur has noted a reluctance on the part of States to consider the best interests of the child. In the three years since she became Rapporteur, the Special Rapporteur has noted that the vast majority of unaccompanied minors who migrate do so for the purpose of family reunification. There is serious concern about the effects of restricting the right of everyone "to leave any country, including his own, and to return to his country" (article 13, paragraph 2 of the Universal Declaration). Several countries apply extreme measures, allowing only their own nationals the opportunity to emigrate, including for purposes of family reunification. Migrants then have no option but to seek irregular ways to migrate and this places minors at high risk, particularly when they travel unaccompanied.

44. The Special Rapporteur has also noted the paradoxical situation which arises in States that consider children of migrants born in their territory as nationals but do not authorize the parents to stay by legal means. In such cases the State would be denying its own national, a minor, the right to live legally, with its parents, in its country.

E. Irregular migration: smuggling, trafficking and slave labour

45. The Special Rapporteur has noted that a good many countries have not come up with an effective strategy to combat the spread of illegal migrant smuggling networks or made trafficking a punishable offence under their law (see E/CN.4/2002/94). National legislation on the subject is still embryonic, and most States are not parties to the United Nations Convention against Transnational Organized Crime and the two supplementary protocols on trafficking and smuggling. The Special Rapporteur is also concerned at reports that State employees are suspected of being in league with the smuggling networks, and reports of the prevailing corruption in this area.

46. The Special Rapporteur considers it highly important to make an effort to block illegal migration, which not only exposes migrants to abuse during their voyage but also, because of their illegal status, affects their rights in the country of destination. On the subject of preventing smuggling, the Special Rapporteur does not think it is possible to evade a thoroughgoing debate on how to regulate migratory flows where there is a real demand for immigrants. Effective policies are needed to prevent illegal migration, starting in the countries of origin, by providing nationals with proper documents, mounting information campaigns and enabling people to put down roots in their home countries. The Special Rapporteur does not believe that economic aid for development can by itself solve the problem of rootlessness: the countries of origin must also undertake to promote the political, social and cultural establishment and integration of their nationals.

47. The Special has noted the concern of receiving countries, particularly in the West, at the specificity of trafficking. However, with regard to networks involved in trafficking for degrading sex work, there does not appear to be any action or appropriate legislation to combat these extreme forms of abuse or the use of degrading and forced labour in those countries. Moreover, like the victims of the trafficking, the Special Rapporteur has noted that no adequate measures have, as yet, been taken to protect and assist the victims.

48. The Special Rapporteur is also concerned to see that the countries that use irregular migrant labour are all reaching the same way to situations in which the rights of such workers are violated. There is a tendency to stereotype irregular migrants and to regard them as criminals.

F. Managing migration with order and dignity

49. In her report to the 82nd session of the IOM Council, which took place from 27 to 29 November 2001, the Special Rapporteur said that effective protection of the human rights of migrants should be guaranteed at every stage and in every procedure of migration management, both in the receiving State and in the States of transit and origin. This focus on rights should be an integral part of any migration procedure, including the deportation or return of non-documented individuals.

50. Throughout her three years in the post, the Special Rapporteur has maintained that the protection of the human rights of migrants is directly linked with migration management and should not be regarded in isolation. Nor is it incompatible with the sovereignty exercised by States in controlling their borders and the entry of people into their territory. Migration should thus take place in conditions that respect the dignity of migrants, in line with States' human rights obligations.

51. The Special Rapporteur is in favour of regional and bilateral initiatives aimed at combating irregular migration, establishing order and cooperation in the management of migration and ensuring the dignified treatment of migrants. She considers that, owing to the complexity of the migration phenomenon, unilateral control measures are ineffective in the medium or long term. She therefore favours the adoption of cooperative, realistic and equitable solutions to the problem of irregular migration and trafficking, by seeking ways and means to regularize migration and find solutions that respect the dignity of those obliged to return to their countries of origin.

52. NGOs should be involved in efforts in this direction, in the areas of cooperation, dialogue and care at the regional level. In that connection, the Special Rapporteur believes that the protection of the human rights of migrants should not be dissociated from or set at variance with the management and control of migration. On the contrary, she would be in favour of the institutions concerned, NGOs and international bodies seeking ways of strengthening the protection of

the rights of migrants within the management process itself.

53. Lastly, the Special Rapporteur wishes to point out that it is time for existing regional dialogues to move beyond their initial stage of diagnosing problems to the adoption of active measures agreed on by all the participating countries.

G. Non-governmental organizations and their role in the protection of the human rights of migrants

54. Throughout her three years of work, the Special Rapporteur has taken the opportunity of engaging in dialogue with many international, regional and national NGOs. She has thus been able to observe the multitude of activities and of NGOs concentrating specifically on migration. She has also noted with satisfaction that NGOs which previously focused exclusively on asylum are beginning to develop activities and programmes relating to migration.

55. The Special Rapporteur recognizes the quality and commitment which these groups bring to their work. It is of particular importance that they should establish a constructive dialogue with the States in which they work in order to draw attention to the problems suffered by migrants and to formulate specific proposals to ensure their protection.

56. The Special Rapporteur would also like to congratulate many NGOs on the work they do in accompanying and assisting migrants and their families, in particular from the countries of origin. Moreover, she greatly values the links currently being forged among NGOs in countries of origin, transit and destination, enabling them to carry out their work in a coordinated way.

57. The Special Rapporteur recommends that NGOs should assist and accompany migrants held in detention.

58. She also recommends that a polarization of the debate on migration, to the detriment of migrants themselves, should be avoided. She would encourage organizations that are making efforts to find a space for dialogue among the various procedures undertaken by States at the national, regional or international level to continue to do so and to involve migrants themselves in their efforts.

V. Conclusions

59. The international community is showing a growing interest in the question of the protection of the human rights of migrants, as is evidenced by the numerous recent world conferences and multilateral forums at which States have devoted extensive attention to the aspects of migration that give rise to particular concern. One of the most convincing proofs of the international community's concern over the situation of migrants was the establishment by the Commission on Human Rights of a monitoring mechanism that would operate independently of the human rights treaties, namely the appointment of the Special Rapporteur on the human rights of migrants.

60. This growing interest on the part of States has been matched by greater activism and involvement by NGOs and civil society in the protection of migrants at the international level.

61. The primary reference document for the mandate on the human rights of migrants is the Universal Declaration of Human Rights, followed by the principal international human rights instruments, including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women.

62. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is a fundamental element of the protection of the human rights of migrants, since it applies to all aspects of the life of migrants and their families and includes a wide range of rights to which even those in an irregular situation are entitled.

63. The United Nations Convention against Transnational Organized Crime and its Protocols on Trafficking in Persons and Smuggling of Migrants are indispensable instruments for the waging of a coordinated struggle against these terrible activities and to protect their victims at the international level. The next challenge is to formulate a concept of migrating populations that will be able to address new situations. The Special Rapporteur considers it essential to highlight the precarious situation faced by people not covered by the provisions of the Convention

relating to the Status of Refugees of 1951 and therefore forced to become clandestine for fear of suffering persecution in their country of origin. In that context, she welcomes the "global consultation" process embarked on by the Office of the United Nations High Commissioner for Refugees (UNHCR), which has given rise to deep and serious debate on the link between asylum and migration.

64. The Special Rapporteur draws attention to the feminization of migratory flows, the particular vulnerability of migrant women and the many forms of discrimination to which they are exposed, especially those engaged in domestic work.

65. The Special Rapporteur takes this opportunity to express her concern about cases of the detention and expulsion of unaccompanied minors and the obstacles to family reunification encountered by such children.

66. She notes that a good many countries have not come up with an effective strategy to combat the spread of illegal migrant-smuggling networks or made trafficking a punishable offence under their law.

67. The Special Rapporteur is particularly concerned, on the basis of information received and direct observation in testimony from migrants, as well as concerns expressed by the authorities and NGOs, by the fact that the criminal activities of trafficking and smuggling are committed in a climate of extreme corruption.

68. The Special Rapporteur suggests that the topic of the protection of the human rights of migrants should be integrated into every stage of migration management.

VI. Recommendations

69. The Special Rapporteur strongly recommends that States should ratify the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families.

70. She also recommends that States should accede to the United Nations Convention against Transnational Organized Crime and its Protocols on Trafficking in Persons and Smuggling of Migrants. This Convention and its Protocols should form the basis of effective and concerted international action to combat this extreme form of abuse and decriminalize its victims.

71. The Special Rapporteur recommends that States should model their national legislation on the Protocols to the Convention in order to prevent, combat and punish the trafficking and smuggling of migrants. Prevention should start in countries of origin; they should combat corruption, issue proper documentation and launch mass information campaigns.

72. In countries of destination containing smuggling and trafficking networks, specific measures should be adopted to protect and decriminalize victims. Effective strategies should be adopted to eliminate the use of exploitative labour.

73. Effective protection for the human rights of migrants should be ensured at every stage of migration management procedures, both in the receiving State and the States of transit and origin.

74. The Special Rapporteur recommends that efforts should be made not to polarize the debate on migration, since the protection of the human rights of migrants is not incompatible with either the exercise of sovereignty by States or the practical implementation of national security policies.

75. The Special Rapporteur urges States to seek joint, equitable and appropriate solutions, through regional and bilateral dialogue, to the problems posed by migration. She also recommends that existing regional dialogues should move beyond the initial phase of diagnosing the problem to that of concerted action by the participating countries.

76. As for xenophobia and discrimination, the measures agreed at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance should be translated into specific national care and prevention programmes and take into account all groups identified as vulnerable, including migrants.

77. The Special Rapporteur considers it most important to tackle the problem of violence against women migrant workers, who constitute a vulnerable group, and recommends that States should draw up programmes specifically aimed at that sector in such areas as legal protection, human rights education campaigns, assistance, punishment of abuses committed against migrant women and protection. The work done by female domestic workers should also be recognized.

78. In the case of domestic and other women workers, the Special Rapporteur recommends that States of origin should provide broad consular protection on a humanitarian basis, particularly for its more disadvantaged migrant nationals or those in irregular situations.

79. The Special Rapporteur strongly urges States to review their practice and legislation to ensure that unaccompanied minors are not subject to restrictions on their liberty and are able to receive assistance appropriate to their status as minors. She also recommends that decisions taken by States in cases involving minors should have as their main objective the protection of the child's best interests.

80. It is recommended that all States should guarantee the right of everyone to leave any country, including his own , and to return to his country. Any obstacles to the right to exit and return, legitimately and with dignity, should be removed.

81. The Special Rapporteur recommends that NGOs should accompany and assist migrants in detention.

82. The Special Rapporteur recommends that communication media should resist the use of negative stereotypes of migrants.

83. The Special Rapporteur urges migrants to acquaint themselves with their rights and to organize to protect those rights.

Notes

[1] Commission resolutions 2002/62 on the human rights of migrants, 2002/59 on the protection of migrants and their families, 2002/58 on violence against women migrant workers and 2002/54 on the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

[2] Amnesty International: Spain: The deadly consequences of racism, torture and ill treatment; Human Rights Watch: Nowhere to turn: State abuses of unaccompanied migrant children by Spain and Morocco; Human Rights Watch: The Other face of the Canary Islands: Rights violations against migrants and asylum-seekers.